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FISCAL IMPACT STATEMENT

LS 6464

BILL NUMBER: SB 315

NOTE PREPARED: Dec 27, 2012

BILL AMENDED:

SUBJECT: State Contracts.

FIRST AUTHOR: Sen. Mrvan

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: *Public Works Contracts:* This bill provides that contracts for public works projects may not be awarded to a contractor that does not: (1) employ residents of Indiana as at least 80% of the employees working on the contract; and (2) enter into subcontracts only with subcontractors that employ residents of Indiana as at least 80% of the employees working on the contract.

The bill applies this restriction to contracts entered into by the Public Works Division of the Indiana Department of Administration (IDOA), any state agency or commission entering into a public works contract, the commission governing the Ports of Indiana, and the Indiana Department of Transportation (INDOT).

Federally-Funded Contracts: The bill provides that if a contract is being paid for with federal funds and the requirement that 80% of the employees must be residents of Indiana would cause the loss of the federal funds, as determined by the federal agency providing the funds, the use of 80% residents is a goal and not a requirement.

Reporting Requirements: The bill requires the Commissioner of the IDOA to prepare an annual report for the public and the Legislative Council stating, for the contractors awarded public works contracts by the state and the subcontractors with which these contractors entered into subcontracts, the percentage of the contractors' and subcontractors' employees working on the public works contracts who are residents of Indiana.

Effective Date: Upon passage.

Explanation of State Expenditures: *Public Works Contracts:* The bill would have indeterminate fiscal impact

on public works projects. Costs for the IDOA, a state agency or commissions contracting for public works, the Ports of Indiana, and the INDOT could increase to the extent that a low-cost bidder who does not employ the required proportion of Indiana residents or who subcontracts with a subcontractor who does not employ the required proportion of Indiana residents may not be granted a contract. Also, contracts awarded to contractors that fail to maintain or who's subcontractor fails to maintain the required proportions of Indiana residents are terminated, reinitiating the contracting process. However, some of these costs may be offset by the contractor or subcontractor being subject to a Class B infraction for failing to employ the required proportion of Indiana residents. A separate infraction applies for each nonresident employed in excess of the allowed number of nonresidents. Infraction penalties are deposited in the state General Fund.

Public Works Contracts-Reporting Requirements: Before August 15 of each year, beginning in 2013, the Public Works Division, state agencies or commissions entering into a public works contract, the Ports of the Indiana, and the INDOT are to report to the Commissioner of the IDOA on the percentage of employees employed by contractors or subcontractors who work on each contract and who are residents of Indiana. The Commissioner is to compile and make available this information for the public and the Legislative Council before October 1 of each year. The reporting requirements, criteria development, and list maintenance could increase costs to the IDOA and other contracting agencies.

Background and Additional Information -

Public Works Contracts- Resident of Indiana: A resident of Indiana is defined as a person at least 18 years old and who has a registered motor vehicle in Indiana, is registered to vote in Indiana, has a child enrolled in an elementary or secondary school in Indiana, or who derives more than one-half of the person's gross income from sources in Indiana. However, if a person only meets the income factor, the person may not be a resident of Indiana if the preponderance of the evidence of the first three factors is not met.

Contractor and Subcontractor Qualifications: Currently, the Public Works Division requires contractors and subcontractors to be certified prior to bidding or performing work under contract for which the cost is estimated at more than \$150,000. INDOT requires a form outlining the contractor's experience and financial condition for prequalification before bidding on contracts for the maintenance or construction of highways, bridges, and appurtenances.

INDOT: INDOT does not keep statistics on the percentage of Indiana residents used by contractors on INDOT projects. However, INDOT does specify that Indiana residents be employed on projects funded with state dollars. INDOT is precluded by federal statute from discriminating against the employment of labor from other states on federally funded projects.

Explanation of State Revenues: *Public Works Contracts:* This bill provides a Class B infraction for a contractor who does not meet the required proportion of resident employees. There could be an infraction charged for each nonresident employed in excess of the number of nonresident employees allowed. The maximum judgment for a Class B infraction is \$1,000, which would be deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the automated record keeping fee (\$5), judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), judicial insurance adjustment fee (\$1),

and the DNA sample processing fee (\$2) are deposited into the state General Fund.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Public Works Contracts:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Persons found guilty of a felony or misdemeanor are also required to pay the following fees that are deposited in local funds: the document storage fee (\$2), which is deposited into the clerk record perpetuation fund, and the jury fee (\$2) and law enforcement continuing education fee (\$4), which are both deposited in the county user fee fund.

State Agencies Affected: IDOA; Any state agency or commission entering into a public works contract; Ports of Indiana; INDOT.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: IDOA website; INDOT website; Abigail Weingardt, INDOT.
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